

Using Digital Content Repositories: Copyright Compliance Manual for TAFE

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1. Introduction

This manual provides copyright information for teachers and TAFE institutes when using digital content repositories.

A digital content repository is a space where digital content can be stored, accessed and shared amongst a group of people. Examples of content repositories used in TAFE include learning management systems (such as Moodle), learning content management systems (such as Equella), cloud computing, intranets, portals, interactive whiteboard galleries, wikis, blogs and media libraries. Teachers may use a range of content on content repositories, including artistic works, text, radio and television programs, film and sound recordings. The manual identifies the copyright considerations in relation to each of these types of content.

The manual provides some Smartcopying tips, to help teachers manage copyright costs and comply with copyright obligations when using content repositories.

2. Text and Artistic Works

There are a number of ways in which teachers can use text and artistic works for educational purposes. You should, where possible, link to or embed links to content, use TAFE owned content, obtain permission to use content or use free for education content.

If you use content in reliance on the statutory Text and Artistic Works Licence, you should be aware that there are copying limits and that there are steps you can take to minimise licence costs for the TAFE sector.

A. Linking

Teachers wanting to provide students with access to text and artistic works on a content repository, should, where possible, provide a link to content rather than upload a copy of the content to the repository.

Linking is not a copyright activity under the *Copyright Act*. This is because you are not actually 'copying' any material, just providing a path to its location on another website. As a result, providing links to material on external websites is a good way of managing copyright.

It is generally not necessary to seek the permission from the website owner when creating a link to their website. However, it is important to include an acknowledgement of the source website. The form of acknowledgement that is appropriate will depend on the circumstances. For example, if you are linking to a useful resource and you know the author of that resource, you may wish to include an acknowledgement such as "Mary Smith from X Institute has provided a useful summary on Y's webpage".

B. Embedding

Embedding a link allows the user to view and access content as it sits in its original location without having to leave their website (eg. blog or wiki) or intranet. It is commonly used for displaying online films, eg. YouTube films on websites.

Embedding involves copying the HTML code of the content, which is often displayed in a box near the content, and pasting it onto your website. The result of this is, rather than displaying the link, it will display the content on your website.

The primary advantage to embedding material is that you do not need to copy the material in order to make it available on your website. Further, embedding is a good way to ensure that students only access the specific material you want them to see on a website, as opposed to accessing an entire webpage which may contain other material not appropriate or relevant to a class exercise. It also means that the students do not leave the TAFE content repository (eg. class wiki or blog) in order to see that material.

C. Material Created by You, Your Institute or Your Department/ Administering Body

If you are using material that:

- (i) is your own original work created in the course of your employment and does not contain any material created by a person who is not an employee of your institute or department/administering body; or
- (ii) was developed by your institute or department/administering body and does not contain material that was created by a person who is not an employee of the Institute or department/administering body,

you do not need to rely on the special provisions in the Copyright Act to use this material. This is because the institute or department/administering body owns the copyright in this material.

However, you must always attribute the material properly.

If it is your own original work created in the course of your employment, you must include the name of your institute or department/administering body and the year of publication on each page.

For example:

© Polytechnic West 2010

If the material is sourced from a resource owned by the department/ administering body, you must include the name of the department/administering body, the name of the resource or website from where it was sourced, and the year of publication on each page.

© WestOne Services 2009, sourced from 'Automotive Vehicle Body – Assessment Tools', published November 2009

D. If you have permission from copyright owner

If you have permission (known as a licence) from the copyright owner you can use the material within the scope of that permission. You should check that the permission allows you upload the material to your content repository and make it available to students. Check how the copyright owner wants to be attributed, and make sure you attribute the material clearly on each page.

If you don't have permission to use the material, and you want to use more than 10% of the work, you may want to contact the copyright owner to try to obtain permission to use the material.

E. Free for Education Material

In some cases, the copyright owner has already given their permission for their material to be used for educational purposes. When this happens, this material is known as 'free for education'.

The advantages to using free for education material include:




1. It is free – the Institute or department/administering body does not pay for the use of this material by teachers.
2. There are no mandatory notice requirements (although there are still obligations to properly attributed the material)
3. Access to this material does not generally need to be restricted to students and teachers. Therefore, free for education material can be used on content repositories which are open to the public.




Note that you still need to comply with any applicable licence terms in relation to free for education material.

1. Creative Commons

The most common source of free for education material is Creative Commons. Creative Commons is a set of licences which creators attach to their work. All Creative Commons licences allow the material to be used for educational purposes. As a result, material available under a Creative Commons licence is 'free for education'. Depending on the type of Creative Commons licence used, a teacher and student may also modify and share the material.

The table below provides a summary of the different Creative Commons licences and what is and is not permitted under each licence.

Licence Type	Licence Conditions
Attribution 	Freely use, copy, adapt and distribute to anyone provided the copyright owner is attributed.
Attribution No Derivatives 	Freely use, copy and distribute to anyone but only in original form. The copyright owner must be attributed.
Attribution Share Alike 	Freely use, copy, adapt and distribute provided the new work is licensed under the same terms as the original work. The copyright owner must be attributed.

Licence Type	Licence Conditions
Attribution Non-commercial 	Freely use, copy, adapt and distribute for non-commercial purposes. The copyright owner must be attributed.
Attribution Non-commercial No Derivatives 	Freely use, copy and distribute to anyone but only in original form for non-commercial purposes. The copyright owner must be attributed.
Attribution Non-commercial Share Alike 	Freely use, copy, adapt and distribute for non-commercial purposes provided the new work is licensed under the same terms as the original work. The copyright owner must be attributed.

For further information, see the 'Creative Commons Information Pack' on the Smartcopying website at: <http://www.smartcopying.edu.au/scw/go/pid/956>

2. AEShareNet

AEShareNet is a licensing scheme which is widely used in the VET sector in Australia. For example, resources made available through the Australian Flexible Learning Framework's Learning Object Repository Network (LORN) use AEShareNet licences.

There are several different AEShareNet licences available, and how a particular work can be used will depend on which licence has been applied to it.

AEShareNet instant licences include:

- AEShareNet-FfE - Free for Education
- AEShareNet-U - Unlocked Content
- AEShareNet-S - Share and Return
- AEShareNet-P - Preserve Integrity



AEShareNet commercial licences may include conditions around:

- licence fees
- royalties
- use, copying, adaptation and distribution of the Learning Object
- licence duration

Always attribute AEShareNet material as required by the particular AEShareNet licence.

For example:

Sourced from "Licensed to Plumb" toolbox © Commonwealth of Australia 2009
Used under the AEShareNet-S (Share and Return) licence



© Australian National Training Authority (ANTA) 2002. Used under licence



© Commonwealth of Australia | Licensed under AEShareNet – S Licence

Further information is provided on the [AEShareNet website](http://www.aesharenet.com.au) at: www.aesharenet.com.au.

3. Free for education websites

There are also many websites which are 'free for education'. This is because their website terms and conditions permit material contained on the website to be copied for 'educational purposes'.

The following table provides a summary of when the terms and conditions of a website will mean the website is 'free for education'.

Note: It can be difficult to interpret the terms and conditions of a website to see whether the website material is 'Free for Education'. For example, the statements at numbers 2, 3 and 4 in the table below may seem like they have the same meaning, however, the use of a comma and inclusion of the word 'and' as opposed to 'or' makes a big difference. As the table shows, only the statement in numbers 4, 6 and 9 below would make a website 'free for education'.

What the website terms and conditions state	Is the website 'Free for Education'?
1. Personal Use	No
2. Personal and non commercial use	No
3. Personal, non commercial use	No
4. Personal or non commercial use	Yes

What the website terms and conditions state	Is the website 'Free for Education'?
5. Private or individual use	No
6. Use in your organisation	Yes
7. © name and/or year and no terms of use	No
8. No copyright © name and/ or year or no terms and conditions	No
9. Educational use	Yes
10. All Rights Reserved	No

For further information, see information sheet 'Understanding Website Terms and Conditions' on the Smartcopying website at: <http://www.smartcopying.edu.au/scw/go/pid/999>

4. *Attributing free for education material*

All free for education material should be attributed with details of the copyright owner and author (if different to the copyright owner), the name of the work, where the material was copied from and when it was copied. Some free for education material may also require further information to be included. For example, when using Creative Commons material, you also need to include a link to the Creative Commons licence.

For example:

Peter Alexander, 'Sounion Temple', <http://www.flickr.com/photos/40681760@N07/3961143351/>, 5 August 2009
Available under a Creative Commons 2.0 Attribution licence:
<http://creativecommons.org/licenses/by/2.0/deed.en>

5. *Where to find free for education material*

The Internet contains a variety of free for education material which is easy to find and use. Remember that you need to comply with any applicable licence terms and conditions.

Some places to source free for education images include:

1. **Flickr:** www.flickr.com
Photo community which contains thousands of images licensed under creative commons (CC) licences.

2. **Open Photo:** <http://openphoto.net/>
Photo community with over 3,000 CC licensed photos in various categories
3. **Wikimedia Commons:** <http://commons.wikimedia.org/>

Many Australian museums, libraries and cultural institutions release artistic material under CC through Flickr. Some include:

- a. **State Library of NSW:** <http://www.flickr.com/photos/statelibraryofnsw/>
- b. **National Library of Australia: Picture Australia**
 - 'People, Places and Events':
http://www.flickr.com/groups/pictureaustralia_ppe/
 - Our Town: http://www.flickr.com/groups/pa_ourtown/
 - Re-Picture: <http://www.flickr.com/groups/re-pictureaustralia/>
- c. **Powerhouse Museum:**
 - 'Play' Materials: <http://play.powerhousemuseum.com/>
 - 'Photo of the Day' Images:
<http://www.powerhousemuseum.com/imageservices/>
 - Flickr Commons Images:
http://www.flickr.com/photos/powerhouse_museum/
- d. **Australian War Memorial:** <http://www.flickr.com/photos/australian-war-memorial/>

For a list of free for education materials see the Smartcopying website at:
<http://www.smartcopying.edu.au/scw/go/pid/933>

F. Text and Artistic Works (Part VB) Licence

Teachers are able to copy and communicate (eg. email, upload, make available on an intranet) text (such articles, poems and short stories) and artistic works (such as articles, poems, photographs, illustrations and images) for educational purposes under a licence in the Copyright Act known as the Statutory Text and Artistic Works Licence, or Part VB Licence. This licence also allows teachers to digitise works to make them available on a content repository.

The TAFE sector pays licence fees to the Copyright Agency (CAL), which is the collecting society responsible for administering the Statutory Text and Artistic Works Licence.

For more examples of text and artistic works, see the Smartcopying website at:
<http://www.smartcopying.edu.au/scw/go/pid/658>

Access

Images and text copied under the Statutory Text and Artistic Works Licence can only be uploaded onto password protected content repositories with access restricted to teachers and students.

Limits

Artistic Works

There are no specific copying limits under the Statutory Text and Artistic Works Licence for artistic works.

Literary, Dramatic and Musical Works

The copying limits for literary, dramatic and musical works are:

- 10% or 1 chapter of a book (whichever is greater)
- 10% of words on a website or from a CD Rom.
- One article in a journal, more than one if on the same subject matter (including articles from online publications such as e-journals, e-books or e-newspapers)

You can copy the whole work if:

- it has not been separately published
- or is not commercially available within a reasonable time at an ordinary commercial price. 'Reasonable time' is six months for text books and thirty days for other material.

In all cases, it is recommended that you only copy what you **need** for educational purposes in order to minimise the copyright costs for the TAFE sector under the Statutory Text and Artistic Works Licence.

Simultaneous Storage Rule

Where 10% or one chapter of a literary, dramatic or musical work is available on a content repository, no other part of that work can be made available on the content repository at the same time. Therefore, if Teacher A places 10% of a book on a content repository for her/his class and Teacher B places another 10% of the same book on a content repository at the same time, this would be in breach of the simultaneous storage rule of the Statutory Text and Artistic Works Licence.

A practical way of managing the simultaneous storage rule is to limit access, where possible, to the material to those students who need to view the material for classroom and/or homework exercises. For example, if Teacher A places one chapter of a book on the institute's learning management system for a classroom exercise with her ESL students, access to this chapter should be limited to those ESL students only and not all of the institute's students.

Attribution

You must always attribute any material you copy under the Statutory Text and Artistic Works Licence with the name of the copyright owner and author (if different to the copyright owner), where the material was copied from and when it was copied.

For example:

Copied under Part VB of the Copyright Act 1968
S. Brooks, www.animalfarm.com.au/photos/2007/htm, accessed 10 May 2009

Part VB Notice Requirements

Each time text or an artistic work is made available online in reliance on the Statutory Text and Artistic Works Licence, the following notice **must** be attached to that work:

NOTICE ON MATERIAL REPRODUCED OR COMMUNICATED UNDER STATUTORY TEXT AND ARTISTIC LICENCE

**FORM OF NOTICE FOR PARAGRAPH 135ZXA(a) OF
COPYRIGHT ACT 1968**

COMMONWEALTH OF AUSTRALIA

Copyright Regulations 1969

WARNING

This material has been reproduced and communicated to you by or on behalf of *[insert name of institution]* pursuant to Part VB of the *Copyright Act 1968* (**the Act**).

The material in this communication may be subject to copyright under the Act. Any further reproduction or communication of this material by you may be the subject of copyright protection under the Act.

Do not remove this notice.

A copy of this notice is available on the Smartcopying website at:
<http://www.smartcopying.edu.au/scw/go/pid/705>

A practical way of including this notice is to insert a link to the notice from the attribution information. The notice would be uploaded onto the repository and then linked to when required.

For example:

Copied under Part VB of the Copyright Act 1968
S. Brooks, www.animalfarm.com.au/photos/2007/htm, accessed 10 May 2009
Part VB Notice: <http://www.smartcopying.edu.au/scw/go/pid/705>

Where it is not possible to include a link to the notice from the attribution information, the notice may be displayed (flashed) on the screen as the user logs into the repository. Although the Copyright Act does require the notice be attached to the material, it is not always possible to do this and displaying the notice is a practical way of including the notice in a repository.

Where the notice is displayed on screen, it is important to state that the notice will only apply to **some** of the material on the repository. This is because not all material saved to the repository will be material copied under the Statutory Text and Artistic Licence. For example, the following sentence can be included above the notice *‘Some of the material in this repository may have been copied and communicated under the Statutory Text and Artistic Works Licence. For this material, the following notice applies’*

Like the Statutory Text and Artistic Licence, the Statutory Broadcast Licence also requires a similar notice to be attached to copies of radio and television programs. If the repository contains material copied and communicated under both the Statutory Text and Artistic Licence **and** the Statutory Broadcast Licence, and it is not possible to link to each notice from the attribution information, the two notices may be merged into one notice. This notice is:

NOTICE ON MATERIAL REPRODUCED OR COMMUNICATED UNDER STATUTORY TEXT AND ARTISTIC LICENCE AND STATUTORY BROADCAST LICENCE

**FORM OF NOTICE FOR PARAGRAPH 135KA (a) AND 135ZXA(a) OF
COPYRIGHT ACT 1968**

COMMONWEALTH OF AUSTRALIA

Copyright Regulations 1969

WARNING

Some of this material may have been reproduced and communicated to you by or on behalf of [*insert name of institution*] pursuant to Part VA or Part VB of the *Copyright Act 1968* (**the Act**).

The material in this communication may be subject to copyright under the Act. Any further reproduction or communication of this material by you may be the subject of copyright protection under the Act.

Do not remove this notice.

For further information on the Statutory Text and Artistic Works Licence, see the Smartcopying website at: <http://www.smartcopying.edu.au/scw/go/pid/700>

Smartcopying Tips

To minimise the copyright fees payable by the TAFE institutes and departments/administering bodies for use of text and artistic works, it is good practice to:

- a. Link to the text or image wherever possible rather than copy it.
- b. Use material created by you, your institute or department/administering body
- c. Obtain permission from the copyright owner to use the material
- d. Use Free for Education material
- e. If you are relying on the Statutory Text and Artistic Works Licence:
 - limit access to the text and images to those students who need to access the text or images for class or homework exercises, eg. the students enrolled in a course rather than all the students enrolled at an institute.
 - remove the text and images as soon as they are no longer required for class or homework exercises. This is because the institute or department/administering body will pay again for images or text that remains on the content repository for more than 12 months. This is known as 'anniversary copying'.

One practical way of managing anniversary copying is to '*flush the repository*' of material copied under the Statutory Text and Artistic Works Licence at the end of each year, ie. before 31 December.

This can be done in two ways:

(i) *Delete material from the repository*

Material that the institute no longer requires for educational purposes should be completely deleted from the repository. This will assist in minimising the storage burden on the institute as well as ensuring that the institute is not incurring anniversary copying fees for material it no longer needs.

(ii) *Archive material on the repository*

Material should be archived where the institute expects to use the material again for educational purposes in the future, or if it is required to keep the material for audit or legal obligations.

Archiving involves moving the material into a **closed area** on the repository or elsewhere online where it can only be accessed by one person, such as the librarian, ICT Manager or teacher who uploaded the material to the repository in the first place.

Restricting access to the material will ensure that the institute is not incurring anniversary copying costs.

3. Radio and Television Programs

A. Off-air Television and Radio Programs (pay and free-to-air)

Teachers are able to copy and communicate (eg make available on an intranet) radio and television programs from free-to-air and subscription (pay TV) channels for educational purposes under a licence in the Copyright Act known as the Statutory Broadcast Licence.

Access

Broadcasts copied under the Statutory Broadcast Licence can only be uploaded onto password protected content repositories with access restricted to teachers and students.

Limits

There are no specific copying limits under the Statutory Broadcast Licence. This means that a teacher can copy an entire television series for educational purposes.

However, it is recommended that you only copy what you **need** for educational purposes. This is important for managing copyright costs under the Statutory Broadcast Licence.

Labelling

You must always label any material you copy under the Statutory Broadcast Licence with the name of the program, the channel it was copied from and the date the copy was made.

For example:

Copied under Part VA of the Copyright Act 1968
'Media Watch', ABC, 17 August 2009

Part VA Notice Requirements

Each time a copy of a radio or television broadcast is uploaded online, the following notice **must** be attached to the copy:

NOTICE ON MATERIAL COMMUNICATED UNDER PART VA LICENCE

**FORM OF NOTICE FOR PARAGRAPH 135KA (a) OF THE
COPYRIGHT ACT 1968**

COMMONWEALTH OF AUSTRALIA

Copyright Regulations 1969

WARNING

This material has been copied and communicated to you by or on behalf of *[insert name of institution]* pursuant to Part VA of the Copyright Act 1968 (**the Act**).

The material in this communication may be subject to copyright under the Act. Any further copying or communication of this material by you may be the subject of copyright protection under the Act.

Do not remove this notice.

This is a mandatory notice prescribed under the Copyright Act.

A copy of this notice is available on the Smartcopying website at:

<http://www.smartcopying.edu.au/scw/go/pid/704>

A practical way of including this notice is to insert a link to the notice from the labelling information. The notice would be uploaded onto the repository and then linked to when required.

For example:

Copied under Part VA of the Copyright Act 1968

'Media Watch', ABC, 17 August 2009

Part VA Notice: <http://www.smartcopying.edu.au/scw/go/pid/704>

Where it is not possible to include a link to the notice from the attribution information, the notice may be displayed (flashed) on the screen as the user logs into the repository. Although the Copyright Act does require the notice be attached to the material, it is not always possible to do this and displaying the notice is a practical way of including the notice in a repository.

Where the notice is displayed on screen, it is important to state that the notice will only apply to **some** of the material on the repository. This is because not all material saved to the repository will be material copied under the Statutory Broadcast Licence. For example, the following sentence can be included above the notice *'Some of the material in this repository may have been copied and communicated under the Statutory Broadcast Licence. For this material, the following notice applies'*.

If the repository contains material copied and communicated under both the Statutory Broadcast Licence **and** the Statutory Text and Artistic Works Licence, and it is not possible to link to each notice from the attribution information, the two notices may be merged into one notice. This notice is:

NOTICE ON MATERIAL REPRODUCED OR COMMUNICATED UNDER STATUTORY TEXT AND ARTISTIC LICENCE AND STATUTORY BROADCAST LICENCE

**FORM OF NOTICE FOR PARAGRAPH 135KA (a) AND 135ZXA(a) OF
COPYRIGHT ACT 1968**

COMMONWEALTH OF AUSTRALIA

Copyright Regulations 1969

WARNING

Some of this material may have been reproduced and communicated to you by or on behalf of [*insert name of institution*] pursuant to Part VA or Part VB of the *Copyright Act 1968* (**the Act**).

The material in this communication may be subject to copyright under the Act. Any further reproduction or communication of this material by you may be the subject of copyright protection under the Act.

Do not remove this notice.

For further information on the Statutory Broadcast Licence, see the Smartcopying website at:
<http://www.smartcopying.edu.au/scw/go/pid/699>

Smartcopying Tips

The institute or department/administering body pays fees for the copying of radio and television programs under the Statutory Broadcast Licence. To minimise the costs payable under this licence, it is good practice to:

- a. Link, where possible, to online programs on broadcaster websites.
- b. Limit access to the broadcast to those students who need to access the broadcast for class or homework exercises (eg. students enrolled in one course rather than all students enrolled at the institute).
- c. Remove the broadcast as soon as it is no longer required for class or homework exercises. This is because the department/administering body will pay again for the copies of broadcasts that remain on the content repository for more than 12 months. This is known as 'anniversary copying'.

One practical way of managing anniversary copying costs is to '*flush the repository*' of material copied under the Statutory Broadcast Licence at the end of each year, ie. before 31 December. This can be done in two ways:

(i) Delete material from the repository

Material that the institute no longer requires for educational purposes should be completely deleted from the repository. This will assist in minimising the storage burden on the institute as well as ensuring that the institute is not incurring anniversary copying fees for material it no longer needs.

(ii) *Archive material on the repository*

Material should be archived where the institute expects to use the material again for educational purposes in the future.

Archiving involves moving the material into a **closed area** on the repository or elsewhere online where it can only be accessed by one person, such as the librarian, ICT Manager or teacher who uploaded the material to repository in the first place. Restricting access to the material will ensure that the institute is not incurring anniversary copying costs.

B. Online free-to-air television and radio programs (podcasts and webcasts)

Teachers are able to copy and communicate (eg. email, upload) podcasts and webcasts from free-to-air channels (SBS, ABCM, NITV, 7, 9, 10) which have been made available on the broadcasters' websites for educational purposes under a licence in the Copyright Act known as the Statutory Broadcast Licence.

Link Where Possible

It is important to link to podcasts and webcasts of free-to-air television and radio programs from the broadcaster's website wherever possible.

Access

Webcasts/podcasts copied under the Statutory Broadcast Licence can only be uploaded onto password protected content repositories with access restricted to teachers and students.

Limits

There are no specific copying limits under the Statutory Broadcast Licence. This means that a teacher can copy an entire television series for educational purposes.

However, it is recommended that you only copy what you **need** for educational purposes. This is important for managing copyright costs under the Statutory Broadcast Licence.

Labelling

You must always label any material you copy under the Statutory Broadcast Licence with the name of the program, URL address of the broadcaster's website and the date it was copied.

For example:

Copied under Part VA of the Copyright Act 1968
'Compass', www.abc.net.au, 25 August 2009

Part VA Notice Requirements

Each time a podcast or webcast of a free-to-air television or radio program is uploaded online, you **must** attach the following notice (the notice is not required if you are only linking to the podcast or webcast):

<p style="text-align: center;">NOTICE ON MATERIAL COMMUNICATED UNDER PART VA LICENCE</p> <p style="text-align: center;">FORM OF NOTICE FOR PARAGRAPH 135KA (a) OF THE COPYRIGHT ACT 1968</p> <p style="text-align: center;">COMMONWEALTH OF AUSTRALIA</p> <p style="text-align: center;"><i>Copyright Regulations 1969</i></p> <p style="text-align: center;">WARNING</p> <p>This material has been copied and communicated to you by or on behalf of <i>[insert name of institution]</i> pursuant to Part VA of the Copyright Act 1968 (<i>the Act</i>).</p> <p>The material in this communication may be subject to copyright under the Act. Any further copying or communication of this material by you may be the subject of copyright protection under the Act.</p> <p>Do not remove this notice.</p>

This is a mandatory notice prescribed under the Copyright Act

A copy of this notice is available on the Smartcopying website at:

<http://www.smartcopying.edu.au/scw/go/pid/704>

A practical way of including this notice is to insert a link to the notice from the labelling information. The notice would be uploaded onto the repository and then linked to when required.

For example:

Copied under Part VA of the Copyright Act 1968
'Compass', www.abc.net.au, 25 August 2009
Part VA Notice: <http://www.smartcopying.edu.au/scw/go/pid/704>

Where it is not possible to include a link to the notice from the labelling information, the notice may be displayed (flashed) on the screen as the user logs into the repository. Although the Copyright Act does require the notice be attached to the material, it is not always possible to do this and displaying the notice is a practical way of including the notice in a repository.

Where the notice is displayed on screen, it is important to state that the notice will only apply to **some** of the material on the repository. This is because not all material saved to the repository will be material copied under the Statutory Broadcast Licence. For example, the following sentence can be included above the notice *'Some of the material in this repository may have been copied and communicated under the Statutory Broadcast Licence. For this material, the following notice applies'*.

If the repository contains material copied and communicated under both the Statutory Broadcast Licence **and** the Statutory Text and Artistic Licence, and it is not possible to link to each notice from the attribution information, the two notices may be merged into one notice. This notice is:

NOTICE ON MATERIAL REPRODUCED OR COMMUNICATED UNDER STATUTORY TEXT AND ARTISTIC LICENCE AND STATUTORY BROADCAST LICENCE

**FORM OF NOTICE FOR PARAGRAPH 135KA (a) AND 135ZX(a) OF
COPYRIGHT ACT 1968**

COMMONWEALTH OF AUSTRALIA

Copyright Regulations 1969

WARNING

Some of this material may have been reproduced and communicated to you by or on behalf of [*insert name of institution*] pursuant to Part VA or Part VB of the *Copyright Act 1968* (**the Act**).

The material in this communication may be subject to copyright under the Act. Any further reproduction or communication of this material by you may be the subject of copyright protection under the Act.

Do not remove this notice.

For further information on the Statutory Broadcast Licence, see the Smartcopying website at:
<http://www.smartcopying.edu.au/scw/go/pid/699>

Smartcopying Tips

The institute or department/administering body pays fees for the copying of radio and television webcasts/podcasts under the Statutory Broadcast Licence. To minimise the costs payable under this licence, it is good practice to:

- a. Link to the television and radio webcast/podcast where possible rather than copying it.
- b. Limit access to the webcast or podcast to those students who need to view the webcast or podcast for class or homework exercises, eg. students enrolled in one course rather than all the students enrolled at the institute.
- c. Remove the webcast/podcast as soon as it is no longer required for class or homework exercises. This is because the department/administering body will pay again for the material every 12 months. This is known as 'anniversary copying'.

One practical way of managing anniversary copying costs is to '*flush the repository*' of material copied under the Statutory Broadcast Licence at the end of each year, ie. before 31 December. This can be done in two ways:

- (i) *Delete material from the repository*

Material that the institute no longer requires for educational purposes should be completely deleted from the repository. This will assist in minimising the storage burden on the institute as well as ensuring that the institute is not incurring anniversary copying fees for material it no longer needs.

(ii) *Archive material on the repository*

Material should be archived where the institute expects to use the material again for educational purposes in the future.

Archiving involves moving the material into a **closed area** on the repository or elsewhere online where it can only be accessed by one person, such as the librarian, ICT Manager or teacher who uploaded the material to repository in the first place. Restricting access to the material will ensure that the institute is not incurring anniversary copying costs.

C. Online pay television and radio programs (podcasts and webcasts)

Teachers are not permitted to copy podcasts and webcasts of pay radio and television programs under the Statutory Broadcast Licence.

Link Where Possible

It is important to link to podcasts and webcasts of pay /subscription TV and radio programs from the broadcaster's website wherever possible. This is because the terms and conditions of the website may not permit copying by teachers or TAFE institutes for educational purposes.

Where Linking is not Practical

Teachers may upload podcasts and webcasts of pay/subscription TV and radio programs onto password protected content repositories under the flexible dealing provision (s 200AB) of the Copyright Act provided the podcast/webcast can only be viewed by teachers and students who are directly giving or receiving the instruction for which the copy has been made, (ie. students enrolled in one course as opposed to all the students enrolled at the institute).

For the flexible dealing provision to apply, the following requirements **must** be met:

1. The podcast/webcast is not a pirated copy

If the copy is available on the broadcaster's website, it is unlikely to be pirated copy.

2. The podcast/webcast is needed for educational instruction

Educational instruction includes using the material to prepare for class, to use in a classroom exercise, for compiling resources for homework, research or assessment tasks or any other activity connected with teaching.

3. The teacher is only copying what is needed for educational instruction.
4. It is not possible to purchase a copy of the broadcast in digital format.
5. The use does not prejudice the copyright owner.

Prejudice to the copyright owner is likely to arise where:

- a. more than what is needed of the podcast/webcast for educational instruction is copied;
- b. the podcast/webcast is not removed from the digital repository **as soon as practicable** after it is no longer required for class or homework exercises;
- c. the quality of the podcast/webcast is interfered with; or
- d. the podcast/webcast is placed on a content repository that is open to the public. Placing the podcast/webcast on a password protected content repository with access restricted to teachers and students of one class only is okay.

Note: Even if the Copyright Act permits a copy to be made under s 200AB, many website terms and conditions do not permit copying by teachers or TAFE institutes for educational purposes. Teachers should seek advice from their local copyright officer or the National Copyright Unit about whether they can rely on s 200AB to use content in a way not permitted by a website's terms and conditions.

For further information on s 200AB, see information sheet 'The New Flexible Dealings Exception: What am I allowed to do?' on the Smartcopying website at:
<http://www.smartcopying.edu.au/scw/go/pid/542>

Labelling

It is good practice to label broadcast copies with the name of the program, URL address of the broadcaster's website and the date it was copied.

For example:

Copied under s 200AB of the Copyright Act 1968
'Creatures of the Sea', www.nationalgeographic.com, 10 August 2009

Access

Webcasts/podcasts copied under s 200AB can only be uploaded onto parts of a password protected repository that can be viewed by teachers and students of courses who are directly giving or receiving the instruction for which the copy has been made.

Flushing

Webcasts and podcasts copied under s 200AB should be removed from the digital repository **as soon as practicable** once they are no longer required for educational instruction.

4. Films (online, VHS and DVDs)

A. Online Films

Linking

It is important to link to films wherever possible. This is because the terms and conditions of the website may not permit copying by teachers or TAFE institutes for educational purposes. As a result, a teacher may be prohibited by contract from copying films for educational purposes.

Embedding

Embedding a film will allow the film to be displayed on your website (eg. wiki or blog) without you having to upload the film onto your website.

Embedding involves copying the HTML code of the film, which is often displayed in a box near the film, and pasting it onto your website. The result of this is, rather than displaying the link, it will show a small screen of the film on your website.

Embedding films mean that a teacher or student does not need to leave their website (eg. wiki, blog or intranet) in order to watch the films as they would need to do with a direct link. Further, embedding is a good way to ensure that students only access the specific material you want them to see on a website, as opposed to accessing an entire webpage which may contain other material not appropriate or relevant to a class exercise (eg. comments or advertisements).

Using Films from YouTube

The terms and conditions of YouTube state that the YouTube films can only be used for 'personal, non-commercial' uses. This does not include copying by teachers and institutes for 'educational use'. As a result, a teacher may not be permitted to copy films off YouTube for educational purposes.

It is important to link to YouTube films or embed YouTube films into your content repository (eg. intranet, wiki or blog) where possible. YouTube makes embedding easy as it provides the link to enable a viewer to embed the film on their own website.

For further information on YouTube and TeacherTube, see the following information sheet on the Smartcopying website: 'Using YouTube' at:
<http://www.smartcopying.edu.au/scw/go/pid/855>

TeacherTube: A Practical Alternative

TeacherTube (www.teachertube.com) is a great alternative to YouTube. The terms and conditions of TeacherTube permit copying for 'educational use' provided a link to TeacherTube is included and the author is credited.

As a result, TeacherTube is a free for education resource and can be freely copied by teachers for educational purposes.

For further information on TeacherTube, see the following information sheet on the Smartcopying website: 'Using TeacherTube' at:
<http://www.smartcopying.edu.au/scw/go/pid/858>

Use Free for Education Material

There are several places on the Internet teachers can go to find films which can be copied for educational purposes.

This is because the copyright owner has already given permission for teachers to use their films. This material is known as 'free for education'.

A primary advantage to using 'free for education' material is that access to this material does not need to be restricted. Free for education material can be uploaded onto content repositories which are password protected and open to the general public.

The following websites host films which are available under Creative Commons licences (CC). All CC material is 'free for education':

- <http://www.blip.tv> – free film distribution site
- <http://wiki.creativecommons.org/Film> - CC wiki listing notable CC licensed films.
- <http://www.revver.com> – advertising supported CC film site

Remember to comply with the terms of the applicable Creative Commons licence.

Making a Copy of Films that are not Free for Education

Teachers may upload online films onto password protected content repositories under s 200AB of the Copyright Act provided the film can only be viewed by teachers and students who are directly giving or receiving the instruction for which the copy has been made, ie. one course as opposed to the students enrolled in the entire institute.

For s 200AB to apply, the following requirements **must** be met:

1. The film is not a pirated copy

Think about who uploaded the film and whether they have permission to make it available online. Avoid copying films off peer-to-peer websites, as these films are more likely to be pirated copies.

2. The film is needed for educational instruction

Educational instruction includes using the material to prepare for class, to use in a classroom exercise, for compiling resources for homework, research or assessment tasks or any other activity connected with teaching.

3. The teacher is only copying what is needed for educational instruction.

In most cases, teachers should only be using short extracts of a film for educational instruction.

Copying an entire film for educational instruction is unlikely to be permitted under s 200AB.

4. It is not possible to purchase the film in digital format.

5. The use does not prejudice the copyright owner.

Prejudice to the copyright owner is likely to arise where:

- more than what is needed of the film for educational instruction is copied
- the film is not removed from the digital repository **as soon as practicable** once it is no longer required for class or homework exercises
- the quality of the film is interfered with
- the film is placed on a content repository that is open to the public. Placing the film on a password protected content repository with access restricted to teachers and students of one class only is okay.

For further information on s 200AB, see information sheet 'The New Flexible Dealings Exception: What am I allowed to do?' on the Smartcopying website at: <http://www.smartcopying.edu.au/scw/go/pid/542>

Note: While the Copyright Act may permit a copy to be made under s 200AB, many website terms and conditions do not permit copying by teachers and TAFE institutes for 'educational purposes'. Teachers should seek advice from their local copyright officer or the National Copyright Unit about whether they can rely on s 200AB to use content in a way not permitted by a website's terms and conditions.

Labelling

If you make a copy of a film in reliance on the flexible dealing provision, it is good practice to label copies with the name of the film, URL address of its location and the date it was copied.

For example:

Copied under s 200AB of the Copyright Act 1968
'Body Parts', www.anatomyguide.com.au, 5 August 2009

Access

Films copied under s 200AB can only be uploaded onto parts of a password protected repository that can be viewed by teachers and students of the courses who are directly giving or receiving the instruction for which the copy has been made.

Flushing

Films copied under s 200AB should be removed from the digital repository **as soon as practicable** once they are no longer required for educational instruction.

B. Making a digital copy of a film from a VHS

Teachers may make a digital copy of a film from a VHS tape to upload onto password protected content repositories under s 200AB of the Copyright Act, provided the digital copy can only be viewed by teachers and students who are directly giving or receiving the instruction for which the copy has been made, ie. the course as opposed to the entire institute.

For s 200AB to apply, the following requirements **must** be met:

1. The original copy is a lawful copy.

This means that the institute or teacher bought the VHS tape or it is a genuine, non-pirated copy given to the institute or teacher.

2. The film, in digital format, is needed for educational instruction.

Educational instruction includes using the material to prepare for class, to use in a classroom exercise, for compiling resources for homework, research or assessment tasks or any other activity connected with teaching.

Note: Creating an online library of films 'just in case' the films may be needed for future exercises is not permitted. There must be a specific educational purpose in mind at the time the digital copy is made.

3. The teacher is only copying what is needed for educational instruction.

In most cases, teachers should only be using short extracts of a film for educational instruction.

Making a digital copy of an entire film for educational instruction is unlikely to be permitted under s 200AB except in very limited circumstances.

4. It is not possible to purchase the film in digital format.

5. The use does not prejudice the copyright owner.

Prejudice to the copyright owner is likely to arise where:

- a. more than what is needed of the film for educational instruction is copied
- b. the film is not removed from the digital repository **as soon as practicable** once it is no longer required for class or homework exercises
- c. the quality of the film is interfered with

- d. the film is placed on a content repository that is open to the public. Placing the film on a password protected content repository with access restricted to teachers and students of one class only is OK.

For further information on s 200AB, see information sheet 'The New Flexible Dealings Exception: What am I allowed to do?' on the Smartcopying website at: <http://www.smartcopying.edu.au/scw/go/pid/542>

Labelling

It is good practice to label copies with the name of the film, and the date it was copied.

For example:

Copied under s 200AB of the Copyright Act 1968
'Body Parts', 5 August 2009

Access

Films copied under s 200AB can only be uploaded onto parts of a password protected repository that can be viewed by teachers and students of one or more classes who are directly giving or receiving the instruction for which the copy has been made.

Flushing

Films copied under s 200AB should be removed from the digital repository **as soon as practicable** once they are no longer required for educational instruction.

C. Making a digital copy of a film from a DVD

Teachers are generally not permitted to make a digital copy of a DVD. This is because most commercial DVDs (eg, 'The Castle') are protected by access control technological protection measures (ATPMs).

ATPMs are technologies which prevent a user from easily accessing and copying the content on a DVD. The most common ATPM technology is a type of software system called CSS (Content Scrambling System). CSS operates like a 'lock and key' code on DVD. In order for a viewer to watch the DVD, the DVD player must be equipped with the corresponding 'software key' to unlock the content and allow it to be viewed.

It is illegal to circumvent an ATPM under the Copyright Act. Making a digital copy of a commercial DVD is likely to involve circumventing the ATPM and therefore is illegal.

For further information on Technological Protection Measures, see information sheet 'Technological Protection Measures and the Copyright Amendment Act' on the Smartcopying website at: <http://www.smartcopying.edu.au/scw/go/pid/522>

5. Sound Recordings copied from vinyl, cassettes and CDs

Use of popular commercial music in podcasts/vodcasts or short films is only permitted in very limited circumstances and should be avoided where possible. A practical alternative to using commercial music is using 'free for education' music. See below for further information on free for education music, including links to websites where you can find free for education music.

Free for Education Material

There are several places on the Internet teachers can go to find sound recordings which are 'free for education'. Free for education material is material which can be copied for educational purposes. This is because the copyright owner has already given permission for teachers to use their music.

A primary advantage to using free for education material is that access to this material does not need to be restricted. Free for education material can be uploaded onto password protected content repositories and repositories that are open to the general public.

The following websites contain music which is available under Creative Commons licences (CC). All CC material is 'free for education':

- <http://ccmixter.org> – CC sound remix tool and archive
- <http://www.opsound.com> – CC music archive
- <http://www.magnatune.com> – CC record label
- <http://jamendo.org> – CC music distribution site
- <http://freesound.iua.upf.edu/> – collaborative database of CC licensed sounds
- <http://cchits.org/> – collaborative podcast where users can contribute, find, and share music under CC licences
- <http://www.artistserver.com/> – music community
- <http://soundtransit.nl/> – archive of "field recordings" from various locations around the world published under a CC Attribution licence

Remember to comply with the terms and conditions of the applicable Creative Commons licence.

Audio Network

Another practical option is to licence sound recordings from 'Audio Network'. Audio Network is an online store where sound recordings can be cheaply purchased and licensed to suit the needs of a TAFE institute.

For further information on Audio Network, see: <http://www.audionetworkplc.com>

Copying the sound recording from vinyl, cassette or CD

Teachers may make a digital copy of a sound recording from vinyl, cassette or CD to upload onto password protected content repositories under s 200AB of the Copyright Act provided the digital copy can only be viewed by teachers and students who are directly giving or receiving the instruction for which the copy has been made (ie. one course as opposed to students enrolled in the entire institute).

For s 200AB to apply, the following requirements **must** be met:

1. The original copy is a lawful copy.

This means that the institute or teacher bought the vinyl, CD or cassette or it is a genuine, non-pirate copy given to the institute or teacher.

2. The sound recording in digital format is needed for educational instruction.

Educational instruction includes using the material to prepare for class, to use in a classroom exercise, for compiling resources for homework, research or assessment tasks or any other activity connected with teaching.

Note: Creating an online music library 'just in case' the music may be needed for future exercises is not permitted. There must be a specific educational purpose in mind at the time the digital copy is made.

3. The teacher is only copying what is needed for educational instruction.

Teachers should only use the particular tracks from sound recordings (CDs and Vinyl) which are necessary for educational instruction and they should remove the copies as soon as practicable after the lesson or assignment/homework exercise is completed.

Making a digital copy of an entire CD or record for educational instruction is unlikely to be permitted under s 200AB except in very limited circumstances (for example, where you cannot purchase the CD or record).

4. It is not possible to purchase the sound recording in digital format.

If it is possible to purchase the sound recording in a digital format, then you must purchase a digital copy rather than rely on s 200AB to format shift your vinyl, CD or cassette.

5. The use does not prejudice the copyright owner.

Prejudice to the copyright owner is likely to arise where:

- a. more than what is needed for educational instruction is copied;
- b. the copy track is not removed from the digital repository **as soon as practicable** once it is no longer required for class or homework exercises;
- c. the quality of the music is interfered with; or

- d. the copy track is placed on a content repository that is open to the public. Placing the copy track on a password protected content repository with access restricted to teachers and students of one class only is okay

For further information on s 200AB, see information sheet 'Format Shifting and the Copyright Amendment Act: What am I allowed to do?' on the Smartcopying website at: <http://www.smartcopying.edu.au/scw/go/pid/529>

Labelling

It is good practice to label copies with the name of the sound recording, artist and the date it was copied.

For example:

Copied under s 200AB of the Copyright Act 1968
'Let it Be', Beatles, 5 August 2009

Access

Sound recordings copied under s 200AB can only be uploaded onto parts of a password protected repository that can be viewed by teachers and students of the course which is directly giving or receiving the instruction for which the copy has been made.

Flushing

Sound recordings copied under s 200AB should be removed from the digital repository **as soon as practicable** once they are no longer required for educational instruction.

6. Using digital sound recordings (from online stores)

When buying digital content from online stores, such as the iTunes store, you must agree to the store's Terms of Use. For example, the iTunes Terms of Use state that products purchased from the store can only be used for 'personal, non commercial use'. This expression may not include 'educational use'. As a result, it is unclear whether the store's contract itself prohibits the educational use of content purchased from the iTunes Store.

It is unclear whether the iTunes terms of use would prevent a TAFE from relying on s 200AB, which is the flexible dealing exception, to use music purchased from iTunes on content repositories. There is a risk that a TAFE might be said to be in breach of *contract* if it copies music downloaded from an online store such as iTunes. However, a TAFE would not infringe copyright if the s 200AB exception set out in the Copyright Act applied.

You will need to find out whether your jurisdiction has decided to rely on the Copyright Act exceptions or avoid using content purchased from online stores such as iTunes.

Relying on s 200AB

Where a teacher decides to rely on s 200AB, they must ensure their use meets all s 200AB requirements:

- a. It is for educational instruction

Educational instruction means teaching (including remote teaching), preparation for teaching, preparing materials for students to use for homework or research tasks, or other uses that are in connection with teaching.

- b. It is non-commercial

Your use will be commercial where you, your students or your institute are making a profit or gaining a commercial advantage from the use of the material. Cost recovery is okay.

- c. It is a special case

Your use will be a special case where it is narrow in both a qualitative or quantitative sense. This means that you are only using what you **need** for educational instruction.

- d. It does not conflict with the normal exploitation of the copyright material

Your use will probably conflict with the normal exploitation of the material where it is possible to purchase a similar resource.

- e. It does not prejudice the copyright owner

Your use will prejudice the copyright owner if you:

- use more than you need.
- expose the content to piracy, such as uploading the content to the internet. Uploading the content to a password protected intranet, blog, wiki or content management system is okay provided students are not able to make further copies.
- do not remove the content from the password protected intranet, wiki, blog or content management system as soon as practicable after it is no longer required for education instruction.

A practical alternative to buying digital music online stores is to:

1. Use free iTunes (or other online store) content
2. Use 'free for education' music.
3. Purchase digital music from Audio Network

Using Free iTunes Content

The iTunes store contains a variety of **free** content. This includes music, TV shows, films, podcasts and applications. This content can be streamed direct from the iTunes store or downloaded into your iTunes player without payment and used for educational purposes.

A user is not required to accept the iTunes Terms of Use when downloading free content. As a result, it is unlikely that the iTunes Terms of Use will be claimed to affect how the content can be used.

Teachers should try to use free iTunes content instead of purchased iTunes content wherever possible to minimise the risk that they are breaching the conditions of use.

Free for Education Material

There are several places on the Internet teachers can go to find digital sound recordings which are 'free for education'. Free for education material is material which can be copied for educational purposes. This is because the copyright owner has already given permission for teachers to use their music.

A primary advantage of using 'free for education' material is that access to this material does not need to be restricted to the students of your course. Free for education material can be uploaded onto content repositories that are open to the general public.

The following websites contain music which is available under Creative Commons licences (CC). All CC material is 'free for education':

- <http://ccmixter.org> – CC sound remix tool and archive
- <http://www.opsound.com> – CC music archive
- <http://www.magnatune.com> – CC record label
- <http://jamendo.org> – CC music distribution site
- <http://freesound.iua.upf.edu/> – collaborative database of CC licensed sounds
- <http://cchits.org/> – collaborative podcast where users can contribute, find, and share music under CC licences
- <http://www.artistserver.com/> – music community
- <http://soundtransit.nl/> – archive of “field recordings” from various locations around the world published under a CC Attribution licence

Audio Network Music

Audio Network is an online store where sound recordings can be cheaply purchased and licensed to suit the needs of an institute.

For further information on Audio Network, see: <http://www.audionetworkplc.com>

For further information see the SmartCopying website at www.smartcopying.edu.au or contact your local copyright manager. You can also contact the National Copyright Unit on (02) 9561 1204 or at email delia.browne@det.nsw.edu.au.

7. Summary of Smartcopying Tips

- ✓ Always attribute
- ✓ Link to material where possible
- ✓ Use your own material or material created by your institute or department/administering body
- ✓ Use material which you have permission to use
- ✓ Use free for education material
- ✓ If relying on Part VA or Part VB Licences:
 - Only use what you need
 - Comply with limits
 - Limit access to students that require it
 - Flush the repository of unused material
- ✓ If relying on the flexible fair dealing exception make sure you comply with all of its requirements